IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Crl.Rev.Pet.No. 3517 of 2007()

CRA.57/2006 of ADDL. SESSIONS COURT, THALASSERY
CC.194/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA

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REVN. PETITIONER: ACCUSED

P.P.NARAYANAN, AGED 43 YEARS,
S/O.KELAN,
AKHANA NILAYAM, THALIYIL, PARASSINIKKADAVU P.O.,
KANNUR DISTRICT.

BY ADV. SRI.S.JAMAL
SRI.BIMAL K.NATH
SRI.E.M.SUNIL KUMAR
SRI.SREEVALSAN.V
SMT.SMITHA DIVAKARAN

RESPONDENTS: COMPLAINANT

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1. K.M.MEENA, AGED 29 YEARS,
W/O.JAYACHANDRAN, K.M.HOUSE, PUNNAKULANGARA,
KANOOL P.O., TALIPARAMBA.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3517 of 2007

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Dated this the 1st day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No. 194 of 2003 on the file of the J.F.C.M, Taliparamba challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner raised the following contentions before me in respect of the revision.

The revision petitioner/accused had no transaction at all with the complainant and the cheque in question was entrusted with one Saji at the time of mediation evidenced by Ext.D1 and the complainant somehow or other obtained the custody of the cheque and was dishonestly filed the complaint.

5. Both the courts below have rejected the said defence set up by the

revision petitioner. In the first place, Ext.D1 does not specifically refers to the present prosecution. Secondly if the revision petitioner entrusted the cheque with one Saji he came to know when he received the statutory notice that the Saji had betrayed him by dishonestly handing over the cheque to the complainant examined as PW1. Strangely never the revision petitioner had not taken any steps against Saji dishonestly parting with the cheque entrusted by the revision petitioner. Under these circumstances, the said defence set up by the revision petitioner cannot be countenanced.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the first respondent complainant by way of compensation under Sec. 357 (3) Cr.P.C. a sum of Rs. 1,75,000/- (Rupees One Lakh Seventy Five Thousand only) within five **months** from today, then he need to undergo only imprisonment till the rising of the court. If the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

5. Amount, if any, paid by the revision petitioner pursuant to the orders, passed by the lower appellate court shall be refunded to the petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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